



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 Wynkoop Street
Denver, CO 80202-1129
Phone 800-227-8917
www.epa.gov/region08

February 25, 2015

Ref: 8EPR-EP

Brent Esmoil, Assistant Field Supervisor
U.S. Fish and Wildlife Service
Montana Field Office
585 Shepard Way, Suite 1
Helena, Montana 59601

Subject: Initiation of Consultation for EPA Action on Montana's New Nutrient Rules

Dear Mr. Esmoil:

The U.S. Environmental Protection Agency has completed its review of the revisions to "Montana's Numeric Nutrient Criteria and Variance Rules," pursuant to Section 303(c) of the Clean Water Act (CWA). The Montana Department of Environmental Quality (MDEQ) and the Montana Board of Environmental Review adopted these revisions on July 25, 2014 and submitted the revisions to the EPA for review on August 15, 2015 pursuant to 40 CFR Section 131.20(c). The EPA must act on these provisions in accordance with CWA Section 303(c). The EPA will act on Montana's submission by March 2, 2015. This letter is to notify you of our intended action and to initiate informal consultation under Section 7(a)(2) of the Endangered Species Act (ESA).

As you know, we have begun our Endangered Species Act analysis related to our action on the numeric nutrient criteria and the general variance provisions. Thus far, we have reviewed the list of terrestrial, aquatic, and aquatic-dependent species and made a no effect determination for the terrestrial species and a not likely to adversely affect finding for the aquatic and aquatic-dependent species. Based on discussions with your staff regarding threatened and endangered species as well as designated critical habitat in Montana, we are comparing occupied and critical habitat areas for bull trout, white sturgeon and pallid sturgeon with the list of dischargers that qualify for a general variance. Our preliminary review identified 14 dischargers located on streams where listed aquatic species are present. We continue to analyze this information.

We appreciate the opportunity to have met with you and USFWS staff on February 17, 2015 and for the recommendations you made regarding additional resources the EPA should consider regarding threatened and endangered species and designated critical habitat. The EPA is in the process of reviewing the scientific articles/studies you recommended and as you suggested, we have contacted Montana Fish, Wildlife and Parks to discuss our action.

The EPA expects to finalize the Agency's Biological Evaluation (BE) within six months and believe the information shared during our meetings will help inform and guide development of a final BE. We look forward to working with you to complete our consultation.

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Should the consultation process identify information regarding impacts on listed species and/or designated critical habitat that supports amending EPA's action, the EPA will, as appropriate, revisit and amend its action for those new or revised water quality standards. If you have any questions, please contact me at 303-312-6776, or have your staff contact Tina Laidlaw at (406)457-5016.

Sincerely,

A handwritten signature in blue ink, appearing to read "Martin Hestmark".

Martin Hestmark
Assistant Regional Administrator
Office of Ecosystem Protection
and Remediation